

**Before the  
Commission on Common Ownership Communities**

In the Matter of:	x	
	x	
Hamlet Station Homeowners	x	
Association, Inc.	x	
P.O. Box 1096	x	
Washington Grove, MD 20880	x	
	x	
Complainant,	x	
	x	
v.	x	Case No. 303-G
	x	(May 2, 1996)
Mike Barron,	x	
8343 Amity Circle	x	
Gaithersburg, MD 20877	x	
	x	
Respondent.	x	

**DECISION AND ORDER**

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore this 2nd day of May, 1996, found, determined, and ordered as follows:

**BACKGROUND**

On March 30, 1995, Hamlet Station Homeowners Association, Inc. (hereinafter, the "Complainant") filed a formal Complaint with the Office of Common Ownership Communities. The Complainant alleged that: (1) during the Summer of 1994, Mike Baron (hereinafter, the "Respondent") erected a fence on his property without prior approval of the Complainant's Board of Directors or its Architectural Committee in violation of Article V of the Complainant's Declaration of Covenants, Conditions, and Restrictions; and (2) the fence constructed by Respondent

failed to comply with the Complainant's Rules and Regulations.

### **FINDINGS OF FACT**

1. The Complainant, Hamlet Station Homeowners Association, Inc., is a community association located in Gaithersburg, Maryland and is governed by a Declaration of Covenants, Conditions, and Restrictions (hereinafter, the "Covenants"), and by a written set of Rules and Regulations.

2. Copies of the Covenants and the Rules and Regulations have been made part of the record in this proceeding.

3. The Respondent owns property at 8343 Amity Circle, Gaithersburg, MD 20877, which is located within the Hamlet Station community and is subject to the Complainant's Covenants and Rules and Regulations.

4. Article V of the Covenants, in pertinent part, provides as follows:

#### **Architectural Control**

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including change in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the community ... by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

5. The Rules and Regulations, dated 1986, as distributed to the community's homeowners, in pertinent part provided as follows:

#### FENCES

Complete drawings of fences need to be submitted for approval prior to construction. Maximum height permitted will be 6' on all sides, with the gate in the back section. The fence is to be constructed of wood and the design is board on board.

....

#### STRUCTURE ADDITIONS/CHANGES - COLOR CHANGES

No building, fence, deck, wall, or other structure shall be erected or maintained upon the property or any exterior addition or change...made to property without prior written approval from the Board of Directors.

6. A copy of the Rules and Regulations, dated 1988, omitted the foregoing quoted passages from the 1986 Rules and Regulations.

7. In the Summer of 1994, the Respondent constructed a fence on his property without obtaining prior approval of the Complainant's Board of Directors or it's Architectural Committee.

8. During the construction of the fence, the Chairman of the Architectural Committee advised the Respondent of the need for prior approval under Article V of the Covenants and informed the Respondent that the fence did not comply with the Rules and Regulations.

9. By certified mail, letter dated September 14, 1994 and delivered on September 17, 1994, the Complainant's Vice President, Jay Scopin, notified the Respondent of the aforementioned alleged violations of the Covenants and of the Rules and Regulations. The letter specified that the Respondent had fifteen (15) days to file an appeal with the Complainant's

Board of Directors and thirty (30) days in which to remedy the alleged violations.

10. The Respondent filed no response to the September 14 letter and undertook no remedial actions regarding the fence.

11. The instant Complaint was filed on March 30, 1995.

12. By letter dated June 2, 1995, the Office of Common Ownership Communities notified the Respondent of the instant investigation, enclosed a copy of the Complaint, and formally requested the Respondent to provide a written response.

13. No response to the June 2 letter was forthcoming.

14. By letter dated August 3, 1995, the Office of Common Ownership Communities again attempted to elicit a response from the Respondent. Once more, no written response was made.

15. On October 24, 1995, the Respondent left a voice mail message with the staff investigator handling this proceeding for the Office of Common Ownership Communities. In that message, the Respondent claimed that the Complainant's former president, Chris Ramsey, had approved the construction of the fence. The Respondent did not provide any written documentation to support his claim. Other than this one telephone message, Respondent has failed to cooperate with the review process of his homeowners' association or of this Commission.

16. This proceeding went to hearing on February 21, 1996. Testimony on behalf of the Complainant was presented by the Complainant's Vice President, Jay Scopin, and by the Chairman of the Architectural Committee, Tom Ondolich. Both Mr. Scopin and Mr. Ondolich are members of the Complainant's Board of Directors. Neither the Respondent nor any representative for the Respondent appeared or presented testimony or otherwise defended his position at the hearing.

## CONCLUSIONS OF LAW

The Commission concludes, based upon a preponderance of the testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. The Respondent, in constructing a fence without the prior review and approval of the Complainant's Board of Directors or Architectural Committee, violated Article V of the Covenants.
2. Respondent must now take steps to comply with the Complainant's Covenants.
3. In light of the foregoing conclusion of a violation of the Covenants, the Commission does not find it necessary to consider whether the actions of the Respondent also are violative of the Complainant's current Rules and Regulations.

## ORDER

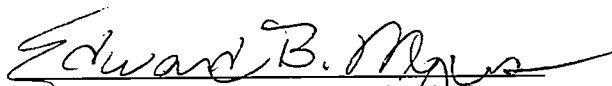
In view of the foregoing and based on the evidence of record, the Commission hereby orders that:

1. Within forty-five (45) days from the date of this Order, the Respondent shall, in accordance with applicable building codes, remove the fence constructed on his property in violation of the Complainant's Covenants.
2. Time is of the essence with respect to compliance with this Order.
3. Within 30 days following the issuance of this Decision and Order, the Complainant shall submit a statement of its fees, costs, and other expenses related hereto, to the Respondent at the above-captioned address.

4. Respondent shall pay for the reasonable fees, costs, and other expenses identified in the statement submitted by Complainant in connection with this proceeding. Payment shall be made to Complainant at the above-captioned address within 15 days following the submission by Complainant of its statement of fees, costs, and other expenses, pursuant to the preceding paragraph.

The foregoing was concurred in by panel members Myers, Kristian, and Price.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

  
Edward B. Myers, Panel Chair  
Commission on Common Ownership  
Communities